

**CRIMINAL JUSTICE ACT PLAN
OF THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

Pursuant to the provisions of the *Criminal Justice Act of 1964* (18 U.S.C. §3006A)¹, the judges of the United States District Court for the Middle District of Georgia have adopted the following plan for furnishing legal representation for any person financially unable to obtain adequate representation for himself. In accordance with §3006A(a)(1), representation *shall* be provided for any financially eligible person who –

- (A) is charged with a felony or a Class A misdemeanor;
- (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;
- (C) is charged with a violation of probation;
- (D) is under arrest, when such representation is required by law;
- (E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension of revocation of a term of supervised release;
- (F) is subject to a mental condition hearing under Chapter 313 of this title;
- (G) is in custody as a material witness;
- (H) is entitled to appointment of counsel under the sixth amendment to the Constitution;
- (I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or
- (J) is entitled to the appointment of counsel under section 4109 of this title.

¹Added Pub.L. 88-455, §2, Aug 20, 1964, 78 Stat. 552, and amended Pub.L. 90-578, Title III, §301(a)(1), Oct. 17, 1968, 82 Stat. 1115; Pub.L. 91-447, §1, Oct. 14, 1970, 84 Stat. 916; Pub.L. 93-412, §3, Sept. 3, 1974, 88 Stat. 1093; Pub.L. 97-164, Title II, §206(a), (b), Apr. 2, 1982, 96 Stat. 53; Pub.L. 98-473, Title II, §§223(e), 405, 1901, Oct. 12, 1984, 98 Stat. 2028, 2067, 2185; Pub.L. 99-651, Title I, §§102, 103, Nov. 14, 1986, 100 Stat. 3642, 3645; Pub.L. 100-182, §19, Dec. 7, 1987, 101 Stat. 127; Pub.L. 100-690, Title VII, §7101(f), Nov. 18, 1988, 102 Stat. 4416.

In addition, as provided by §3006A(a)(2), whenever a judicial officer of this court determines that the interests of justice so require, representation *may* be provided for any financially eligible person who –

(A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or

(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

For purposes of this plan, *representation* shall include, in addition to legal counsel, such investigative and expert assistance and such other services necessary to provide an adequate defense. *Judicial officers* and *judges* of this court refers to United States judges and United States magistrate judges.

I. PROVISION FOR FURNISHING LEGAL COUNSEL

This district plan provides for the continued appointment and compensation of private counsel which historically have been utilized by this court.

II. PANEL OF ATTORNEYS

The panel of attorneys from which appointment of counsel under the *Criminal Justice Act* shall consist of all members of the bar of the United States District Court for the Middle District of Georgia. That is, all members of the bar of this court shall be subject to appointment under the *Criminal Justice Act*. The judges of this court shall endeavor at all times to appoint only qualified and competent legal counsel to represent financially eligible persons, giving preference to those attorneys who have expressed a willingness to represent indigent parties in this court. The clerk of court shall maintain a record of appointments made by the judges of this court.

III. DETERMINATION OF NEED FOR COUNSEL

A. Duty to Inquire into Request for Counsel –

It shall be the responsibility of the judicial officer before whom one requesting appointment of counsel first appears, or to whom a request for legal representation is made, to inquire into the need for legal representation and whether the one requesting representation is qualified for appointment of counsel under the *Criminal Justice Act*. The judicial officer shall advise the party appearing before him of his right to be represented throughout the proceeding by legal counsel of his own choosing but that an attorney will be provided to him under the *Criminal Justice Act* if he so desires and if he otherwise qualifies for appointment of counsel.

B. Requests - How Made –

Requests for appointment of counsel may be made orally or in writing. The party requesting appointment of counsel shall execute a financial affidavit (Form CJA 23) under penalty of perjury setting forth his income and expenditures and his debts and assets. In lieu thereof, or supplemental thereto, the court may examine the party under oath in open court and may cause further inquiry to be made at any time as to the party's ability to employ private counsel. The court may take judicial notice of a party's incarceration as indicative of his indigency.

C. Challenges to Party's Claim of Financial Standing –

It shall be the responsibility of the judges of this court to resolve any challenges to the claimed financial inability of a party to obtain his own representation.

IV. APPOINTMENT OF COUNSEL

A. Legal Representation Requested –

If legal representation is requested and the party requesting the appointment of counsel is found to be qualified for said appointment under the *Criminal Justice Act*, the court shall immediately take steps to provide counsel to the party.

Separate counsel shall be appointed by the court for defendants having interests which cannot properly be represented by the same counsel or when other good cause for separate representation has been shown.

B. Legal Representation Not Requested –

If legal representation is not requested, or if the court determines that appointment of counsel is not permitted under the *Criminal Justice Act*, the party appearing before the court shall execute a written WAIVER OF ATTORNEY before further proceedings are held. If a party not entitled to appointment of counsel refuses to waive legal representation, the judicial officer presiding shall note the same on the record.

C. Retroactive Appointments –

Retroactive appointments of counsel are authorized by the *Criminal Justice Act* to include any representation furnished pursuant to this plan prior to appointment by the court. Accordingly, when a person arrested has been represented by counsel before his presentation before a judicial officer of this court *under circumstances where such representation is required by law*, his counsel may subsequently apply to the court for approval of compensation. Upon a finding that such representation was required by law and that the person otherwise then met the

requirements of the *Criminal Justice Act*, the court may order retroactive compensation and/or order retroactive appointment of counsel where counsel will continue to represent the person for whom services were previously rendered. If the person represented is unavailable at the time counsel applies for compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the court for approval based on a showing of the arrestee's financial condition at the time the services were rendered and a showing that such representation was required by law.

D. Selection of Counsel –

Appointment of counsel under the *Criminal Justice Act* is the province of the judicial officers of this court. The party requesting appointment of counsel shall not have the right to select his appointed counsel. However, the court may consider prior representation of the party, whether retained or appointed, in making an appointment under this plan; that is, the court may consider the circumstances of each requested appointment, including knowledge of the facts of the case obtained while representing the party in proceedings in other courts.

E. Change of Financial Status –

If, at any stage of proceedings before this court, a party who has previously retained legal counsel advises the court that he no longer has the financial ability to provide for his continued representation and requests the appointment of counsel under the *Criminal Justice Act*, a judicial officer may appoint counsel for such party after inquiry into the circumstances thereof. The court will not ordinarily appoint retained counsel to continue in his representation of the party

but will consider the facts of each case separately as well as the need for judicial economy. However, if counsel formerly retained is appointed under such circumstances, said counsel may claim compensation only for such services rendered after appointment.

F. Payment or Promise of Payment Prohibited –

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party unless such payment is approved by order of court or except under circumstances where counsel formerly retained is appointed as provided above.

V. CONTINUATION OF APPOINTMENT

A. Duration of Appointment –

Counsel appointed by a judicial officer of this court shall, unless excused by order of court, continue to act for the party for whom appointed throughout all proceedings in this court and in the Court of Appeals for the Eleventh Circuit. In the event of the conviction of a party following trial or of an adverse ruling against a party, counsel appointed under this plan shall promptly advise the party of his right of appeal and of his right to continued representation on appeal by legal counsel. If requested to do so by the party, counsel shall file a timely notice of appeal.

B. Substitution of Counsel –

In the interest of justice, a judicial officer of this court may substitute one appointed counsel for another at any stage of any proceeding in this court for cause shown.

C. Termination of Appointment –

If, at any time after his appointment, counsel should have reason to believe that his client is or has become financially able to obtain counsel or to make partial payment of an attorney's fee, he shall promptly advise the court. The court will then make inquiry and will determine whether the order of appointment ought to be vacated or modified. If a judicial officer independently determines at any time after appointment that a party is or has become financially able to employ his own attorney, he may vacate the appointment previously made.

VI. INVESTIGATIVE, EXPERT AND OTHER SERVICES

A. Services Provided Upon Request –

Counsel (whether or not appointed under the *Criminal Justice Act*) for any person who is financially unable to obtain investigative, expert or other services necessary for adequate representation may request the court to provide such services in an *ex parte* application directed to a judicial officer, as provided in 18 U.S.C. §3006A(e)(1). Upon a finding by the judicial officer, after appropriate inquiry, that such services are necessary and that the person for whom they are sought is financially unable to obtain them, the court shall authorize counsel to obtain such services.

B. Services Provided Without Prior Request –

Pursuant to 18 U.S.C. §3006A(e)(2), counsel appointed under the *Criminal Justice Act* may obtain, subject to late review, investigative, expert or other services without prior authorization if necessary for the adequate representation of his client. The total cost of services obtained without prior authorization may not

exceed \$300.00 and expenses reasonably incurred. However, the court may, in the interest of justice and upon finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$300.00. Such expenditures without prior court authorization are not favored, and any application for court approval of such prior expenditures must clearly show why prior authorization could not have been obtained, in addition to demonstrating the necessity of such expenditures for adequate representation and financial inability on the part of the party for whom the services were obtained.

C. Submission of Requests –

Requests for investigative, expert, or other services shall be submitted to the court by counsel (or by a *pro se* party) upon such forms designated and provided by the clerk of court, and the signing of said forms by counsel and by claimants shall affirm and certify as to the truth of the representations made therein. Said requests shall include the hourly or daily rate of the investigator, expert, etc. and an estimate of the total expenditure for services rendered. The judicial officer considering such requests may impose a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 U.S.C. §3006A(e)(3).

D. Notification of Withdrawal of Authorization to Render Services –

It shall be the responsibility of counsel appointed under the *Criminal Justice Act* or of any person proceeding *pro se* for whom services have been authorized and/or provided to promptly advise those rendering services of the limits of

compensation and of the vacation or withdrawal of any authorization for the rendering of such services.

VII. HOW TO SUBPOENA WITNESSES

Counsel appointed under the *Criminal Justice Act* shall not cause the issuance of subpoenas for witnesses without prior approval of a judicial officer of this court in accordance with the following procedures:

A. Counsel shall submit to the judicial officer a written, *ex parte* request identifying the name and location of each witness to be subpoenaed and providing a summary of the testimony expected to be provided by each witness;

B. Upon approval by the judicial officer, counsel shall prepare a criminal subpoena form for each witness approved and shall promptly deliver said form to the clerk of court; and,

C. The clerk of court shall promptly deliver such subpoena to the U.S. Marshal for service.

At the conclusion of the trial or hearing for which the witness is subpoenaed, the witness shall complete a voucher itemizing travel and subsistence expenses incurred in connection with the trial or hearing. Upon approval of the voucher, the U.S. Marshal shall remit the amount of reimbursement to the witness as directed by the court.

VIII. COMPENSATION

Payment of fees and expenses to counsel appointed under the *Criminal Justice Act* and pursuant to this plan, as well as payment for investigative, expert, and other services necessary for adequate representation of any party, shall be made in accordance with provisions of the *Criminal Justice Act*, as it may from time to time be amended; in accordance with applicable rules, regulations, and guidelines of the Judicial Conference of the United States; and, in

accordance with the fiscal policies of the Administrative Office of the United States Courts. Claims for compensation and reimbursement of expenses shall be submitted to the judicial officer presiding over the termination of said case on the prescribed forms provided by the clerk's office.

IX. REIMBURSEMENT BY PARTY FOR FEES AND EXPENSES

PAID UNDER THE *CRIMINAL JUSTICE ACT*

If it appears at the conclusion of any proceeding in this court wherein legal counsel and/or other services were provided by the court under provisions of the *Criminal Justice Act* that the party provided with representation and services has the ability to pay for all or a portion thereof, the court may require reimbursement by that party of all or any part of the fees and expenses so paid.

X. DUTY OF THE CLERK OF COURT

It shall be the duty of the clerk of court to implement the provisions of this plan by processing all requests for appointment of counsel and requests for services other than counsel. The clerk shall issue orders and vouchers as directed by the judges of this court. In addition, the clerk shall be responsible for processing all requests for payment submitted by counsel, parties, investigators, experts, and other providers of services.

XI. DUTY OF THE U.S. PROBATION OFFICE

It shall be the duty of the U.S. Probation Office, as part of its pretrial services responsibilities, to make inquiry of each person taken into custody or otherwise directed to appear in this court as a defendant, probationer, releasee, juvenile, witness, or otherwise, as to the need for legal representation. In the course of interviewing such persons, that office shall cause a CJA Form 23 (or such other form as may hereafter supersede it) to be filled out by any person

requesting appointment of counsel and shall cause said completed form to be presented to a judicial officer of this court for consideration.

XII. USE OF FORMS

Standard forms approved by the Judicial Conference of the United States or an appropriate committee thereof and provided by the Administrative Office of the United States Courts, or such other forms prepared in conformity thereto, shall be used by the court, the clerk of court, the U.S. Probation Office, counsel, and all parties in carrying out the provisions of this plan and the *Criminal Justice Act*.

XIII. EFFECTIVE DATE OF PLAN

This plan was executed on the 6th day of May, 1997, by Chief United States District Judge Duross Fitzpatrick and has been approved by the Judicial Council of the Eleventh Circuit.

SEE ADDENDUM (NEXT PAGE)

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA

ADDENDUM TO THE PLAN FOR PROVIDING REPRESENTATION
PURSUANT TO THE CRIMINAL JUSTICE ACT

Subject to the approval of the Judicial Council of the Eleventh Circuit, the Criminal Justice Act (CJA) Plan for the Middle District of Georgia is hereby amended to designate a Community Defender Organization to furnish representation to indigent criminal defendants in this district pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, 18 U.S.C. §3006A, and the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*. The bylaws of the community defender organization shall be attached to this CJA Plan immediately upon approval.

The Community Defender Organization shall be capable of providing legal services throughout the district.

The Executive Director of the Community Defender Organization shall notify this court when he or she is available to accept appointments for representation. The Executive Director shall be responsible for the supervision and management of the organization. Accordingly, the Executive Director shall be appointed in all cases assigned to the organization for subsequent assignment of staff attorneys at his or her discretion.

The provisions of the CJA Plan, last amended on May 6, 1997, shall remain in effect except to the extent that they are inconsistent with the provisions of this amendment, in which case the provisions of this amendment shall govern.

This amendment shall take effect upon its approval by the Judicial Council of the Eleventh Circuit.

Dated at Albany, Georgia, this 9th day of July, 2004.

/s W. Louis Sands
Chief United States District Judge

(NOTE: This addendum was approved by the Judicial Council of the Eleventh Circuit on August 18, 2004.)